FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1877 OF 2005

Office Notes, Office Memoranda appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Order

Mr.M.S.Karnik, for Petitioners.

CORAM: D.K.DESHMUKH,J.

DATED: 31st August, 2005.

P.C.:-

1. By this petition, the petitioners challenge the order passed by the Appeal Court allowing the appeal filed by the Respondents against the order passed by the Trial Court granting temporary injunction in favour of the petitioners/plaintiffs. The Appeal Court

has given reasons in detail for setting aside the order passed by the Trial Court. The Appeal Court while considering the matter in detail has prima facie found that the Civil Court has no jurisdiction to entertain the suit. Considering that the matter has been considered by the Appeal Court in detail, in my opinion it will not be appropriate for this Court to interfere with the order.

2. A complaint is made that the Appeal Court has recorded the findings that prima facie it appears that the suit is not maintainable, though issue in compliance of Section 9A of C.P.C. was not framed. It is an admitted position that the issue of jurisdiction of the Trial Court to entertain the suit was raised and the Trial Court has granted application in favour of the plaintiffs without framing issue of jurisdiction as a preliminary issue. The order of the

Trial Court clearly violates the provisions of Section 9A of C.P.C. and therefore, no fault can be found with the order of the Appeal Court setting aside the order passed by the Trial Court. If according to the petitioners, the Appeal Court should not decide the issue for the first time, it was for the petitioners to make a request to the Appeal Court to remand the application back under Order 39 Rule 1 and 2 of C.P.C. to the Trial Court for fresh hearing. But the petitioners have chosen not to adopt that course and instead they argued on the jurisdiction of the Appeal Court. They had argued the question before the Appeal Court and now the petitioners turned around and finding fault with the findings recorded by the Appeal court that prima facie it appears that the suit is not maintainable. The Petition for all these reasons cannot be entertained. The petition is disposed of.